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DEPT. OF INSURANCE  
BY Kash

STATE OF ARIZONA  
DEPARTMENT OF INSURANCE

In the Matter of: ) Docket No. 96A-113-INS  
)  
HAROLD ROY KELTNER, ) **ORDER**  
)  
Petitioner. )  
)  
)  
)

On October 31, 1996, the Office of Administrative Hearings, through Administrative Law Judge Richard N. Blair submitted "Recommended Decision of Administrative Law Judge" (the "Recommended Decision"), a copy of which is attached and incorporated by this reference. The Director of the Arizona Department of Insurance has reviewed the Recommended Decision of Administrative Law Judge, and enters the following order:

1. Recommended findings of fact paragraphs 1-24 are adopted.
2. Recommended finding of fact paragraph 25 is rejected.
3. Recommended conclusions of law paragraphs 1-5 are adopted.
4. Recommended conclusion of law paragraph 6 is rejected; and in its place, the following conclusions of law is entered:

The legislature vested the Director with the discretion to determine the qualifications of an applicant for an insurance license. A.R.S. §20-290(B). For the Director to exercise this discretion, an insurance license applicant must submit an application to the Director that fully and truthfully

1 discloses information determined to be relevant by the Legislature to enable  
2 the Director to discharge these statutorily imposed obligations. A.R.S.  
3 §§20-290, 20-291. The exercise of discretion includes the authority to  
4 deny an application submitted by a person who has failed to disclose  
5 information material to the licensing determination. A.R.S. §20-290(B)(1).

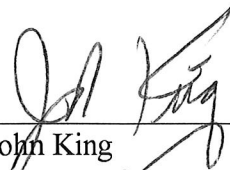
6 In light of the material misrepresentations made by Mr. Keltner on  
7 the application to become licensed as an insurance agent by failing to  
8 disclose his record of conviction involving crimes of moral turpitude, the  
9 exercise of discretion in this case does not support a finding that Mr.  
10 Keltner possesses the requisite qualification to be licensed by the  
11 Department as an insurance agent.

12 5. The recommended order is rejected and in its place the following Order is enacted:

13 It is ordered denying the application for a life, disability, and  
14 variable annuity agent license submitted to the Department by Harold Roy

15 Keltner on March 11, 1996.

16 EFFECTIVE this 20<sup>th</sup> day of November, 1996

17  
18   
19 John King  
Director of Insurance

1 A copy of the foregoing mailed  
2 this 20<sup>th</sup> day of November, 1996

3 Charles R. Cohen, Deputy Director  
4 Catherine O'Neil, Assistant Director  
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23

1                                   **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2  
3   In the Matter of:

No. 96A-113-INS

4   **HAROLD ROY KELTNER,**

**RECOMMENDED DECISION  
OF ADMINISTRATIVE  
LAW JUDGE**

5  
6                                   Petitioner.

7  
8  
9                   **HEARING:**   October 21, 1996

10           **APPEARANCES:**   Michael Salcido, Esq., appeared on behalf of Harold Roy  
11 Keltner, Petitioner; and Assistant Attorney General Michael J. De La Cruz appeared on  
12 behalf of the Arizona Department of Insurance.

13           **ADMINISTRATIVE LAW JUDGE:**   Richard N. Blair

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16                                   Based upon the entire record, the following recommended Findings of  
17 Fact, Conclusions of Law, and Recommended Order are made:

18                                   **FINDINGS OF FACT**

19           1.       On March 11, 1996, Harold Roy Keltner ("Mr. Keltner") submitted an  
20 application for a life, disability and variable annuity insurance agent license  
21 ("Application") to the Arizona Department Of Insurance ("Department") and was issued  
22 a conditional license in connection with the Application upon Mr. Keltner's execution of  
23 an Agreement for Conditional License.

24           2.       Mr. Keltner answered "NO" to Question F(2) of the Application which asks:  
25 "Have you EVER been convicted of a felony?"

26           3.       Mr. Keltner answered "NO" to Question F(3) of the Application which asks:  
27 "Have you EVER been arrested, questioned, served a criminal summons, taken into  
28 custody, charged with, tried for, or ever been the subject of an investigation concerning  
29  
30

1 the violation of any felony or misdemeanor, or are any charges now pending against  
2 you? "

3 4. In a letter dated May 29, 1996, the Department informed Mr. Keltner that  
4 his conditional license was revoked and the Application denied because Mr. Keltner  
5 misrepresented his criminal background on the Application.

6 5. On June 7, 1996, Mr. Keltner timely filed with the Department a demand  
7 for hearing concerning this matter.

8 6. On October 28, 1979 , Mr. Keltner was arrested by the Phoenix Police  
9 Department and charged with Count 1: Attempting to Obtain a Narcotic Drug by Fraud  
10 or Deceit, a Class 5 Felony, in violation of A.R.S. §§ 36-1017, 13-701, 13-702, 13-801  
11 and 13-1001; and Count 2: Attempting to Obtain Prescription Only Drug by Fraud or  
12 Deceit, a Class 5 Felony, in violation of A.R.S. §§ 32-1971, 32-1996(A), 13-701, 13-702  
13 and 13-801.

14 7. The evidence established that in October 1979, Mr. Keltner attempted to  
15 obtain narcotic and prescription only drugs by calling in prescription drug orders to  
16 pharmacists while falsely representing himself to be "Dr. Mort." At the hearing, Mr.  
17 Keltner admitted that in 1979 he provided false information in an attempt to obtain  
18 narcotic drugs.

19 8. Mr. Keltner pleaded guilty to Counts 1 and 2, as described in paragraph 6  
20 above, on January 7, 1980 in State of Arizona v. Harold Roy Keltner, Maricopa County  
21 Superior Court, Case No. CR 109680 ("Case No. CR 109680").

22 9. On January 25, 1980, the Maricopa County Superior Court entered a  
23 Judgment in Case No. CR 109680 convicting Mr. Keltner of Attempting to Obtain  
24 Narcotic Drug by Fraud or Deceit, a Class 5 Felony, and of Attempting to Obtain a  
25 Prescription Only Drug by Fraud or Deceit, a Class 5 Felony, in violation of  
26 A.R.S. §§ 36-1017, 32-1971 and 32-1996. The Court suspended imposition of a  
27 sentence and placed Mr. Keltner on three (3) years probation commencing January 25,  
28 1980.  
29  
30

1           10.    On October 24, 1979 and October 29, 1979 Mr. Keltner was arrested and  
2 on November 15, 1979 an Information was filed in the Maricopa County Superior Court,  
3 State of Arizona vs. Harold Roy Keltner, Jr., Case No. CR 109522 ("Case No. CR  
4 109522") charging Mr. Keltner with Count 1: Attempting to Obtain Prescription only drug  
5 by Fraud or Deceit, a Class 5 Felony , and Counts 2 and 3: Obtaining a Prescription  
6 Only Drug by Fraud or Deceit, Class 5 Felonies. This matter was dismissed pursuant to  
7 the plea agreement entered into by Mr. Keltner in Case No. CR 109680.

8           11.    On October 25, 1979 , Mr. Keltner was arrested by the Mesa Police  
9 Department and an Information was filed on November 23, 1979, in the Maricopa  
10 County Superior Court, State of Arizona vs. Harold Roy Keltner, Jr., Case No. CR  
11 109598 ("Case No. CR 109598") charging Mr. Keltner with Attempted Armed Robbery,  
12 a Class 3 and Dangerous Felony, in violation of A.R.S. §§ 13-1001, 13-1901, 13-1902,  
13 13-1904, 13-701, 13-702, and 13-801.

14           12.    The evidence established that on October 25, 1979, Mr. Keltner  
15 approached a vehicle in a pharmacy parking lot and while brandishing a gun demanded  
16 the victim to turn over her purse. It is undisputed that after Mr. Keltner confronted the  
17 victim he left the scene without taking the victim's purse. Mr. Keltner's testimony that he  
18 was under the influence of narcotics at the time of this incident is corroborated by the  
19 Presentence Investigation Report which was prepared in Case No. CR 109598.

20           13.    On November 27, 1979, Mr. Keltner pleaded guilty to Attempted Armed  
21 Robbery in Case No. CR 109598.

22           14.    On January 25, 1980 the Court entered a Judgment in Case No.  
23 CR 109598 convicting Mr. Keltner of Attempted Armed Robbery, a Class 3 Felony, in  
24 violation of A.R.S. §§ 13-1001, 13-1901, 13-1902, 13-1904, 13-701, 13-702, and 13-  
25 801. The Court suspended imposition of a sentence and placed Mr. Keltner on three  
26 (3) years probation to run concurrent with the probation imposed in Case No.  
27 CR 109680.

28           . . .  
29           . . .  
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1           15.    As a condition of Mr. Keltner's probation in Case Nos. CR 109598 and  
2 CR 109680, the Court ordered Mr. Keltner to participate in Treatment Alternatives to  
3 Street Crime ("TASC") and the St. Joseph's Drug Rehabilitation Program.

4           16.    On June 17, 1981 a Petition for Early Termination of Probation ("Petition")  
5 was filed in the Maricopa County Superior Court in Case Nos. CR 109680 and  
6 CR 109598 by Mr. Keltner's probation officer, Barbara Glessner. In the Petition Ms.  
7 Glessner recommended early termination because Mr. Keltner had not been involved in  
8 any criminal activities, had paid all court ordered reimbursement, and successfully  
9 completed an outpatient drug rehabilitation program.

10          17.    On July 6, 1981 the Court granted the Petition and entered an Order of  
11 Discharge From Probation in Case Nos. CR 109680 and CR 109598.

12          18.    On November 4, 1981, the Maricopa County Superior Court entered an  
13 Order Vacating Judgment of Guilt, Dismissing Charges, and Restoring Civil Rights (the  
14 "Order") in Case Nos. CR 109680 and CR 109598.

15          19.    At the hearing, Mr. Keltner testified that when the Order was issued the  
16 judge informed him that the Order created a "clean slate" and that the arrests and  
17 felony convictions were permanently removed from his record. According to Mr. Keltner,  
18 he was also informed that after the entry of the Order he would no longer be required  
19 to ever disclose his prior arrests and felony convictions. Mr. Keltner further testified that  
20 although he read Questions F(2) and F(3), he did not recall reading the introductory  
21 language to Paragraph F, which indicates that a "NO" response would be unjustified if  
22 the conviction was set aside or if civil rights were restored.

23          20.    In mitigation, Mr. Keltner further testified that his criminal record resulted  
24 from several incidents which occurred during a one week period approximately 17 years  
25 ago, when Mr. Keltner was 22 years old and addicted to prescription medications. Mr.  
26 Keltner testified that since 1980, he has been drug free and never been arrested or  
27 convicted of a crime.

28           . . .

29           . . .  
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1           21.     Since the time of Mr. Keltner's convictions, he has graduated from Arizona  
2 State University with a B.S. Degree and completed the Graduate School of Credit and  
3 Financial Management at Stanford University where he achieved the Certified Credit  
4 Executive designation. Mr. Keltner also produced credible evidence to establish a  
5 steady employment history in the credit and collections industry since 1980 and  
6 substantial involvement with civic organizations.

7           22.     Mr. Keltner stated that his failure to affirmatively answer questions F(2)  
8 and F(3) on the Application was a mistake and was done without any intent to  
9 misrepresent or perpetrate fraud.

10          23.     Mr. Keltner's testimony at the hearing, as set forth above, was determined  
11 to be credible.

12          24.     Petitioner contended that his criminal convictions in Case Nos.  
13 CR 109680 and CR 109598 does not constitute a record of conviction for felonies  
14 involving moral turpitude within the meaning of A.R.S. § 20-290(B)(6) because the  
15 Petitioner's actions resulted from an addiction to narcotics. Although Mr. Keltner's  
16 addiction to narcotics may be a mitigating circumstance, the crimes committed by Mr.  
17 Keltner involved dishonesty, deceit and were contrary to moral standards. Accordingly,  
18 the felonies for which Mr. Keltner was convicted constitute felonies involving moral  
19 turpitude.

20          25.     Mr. Keltner's criminal record as grounds for denial of the Application is not  
21 significant considering the amount of time which has elapsed since Mr. Keltner's  
22 commission of the offenses and conviction, his age at the time the crimes were  
23 committed, his successful drug rehabilitation, and his demonstrated achievements in  
24 the business and social communities.

#### 25                           **CONCLUSIONS OF LAW**

26           1.     The Director has jurisdiction over this matter pursuant to A.R.S. § 20-161.

27           2.     The failure of Mr. Keltner to answer questions F(2) and F(3) on the  
28 Application in the affirmative is a material misrepresentation, in the application for, or  
29 attempt to obtain, any insurance license within the meaning of A.R.S. § 20-290(B)(1).  
30



1           3.       Pursuant to A.R.S. § 20-290(B)(1), the Director may refuse to issue a  
2 license to Mr. Keltner if the Director finds that Mr. Keltner made a material  
3 misrepresentation or committed fraud in the application for, or attempt to obtain, any  
4 insurance license.

5           4.       Mr. Keltner's criminal convictions in Case Nos. CR 109680 and  
6 CR 109598 constitutes a record of conviction by final judgment of a felony involving  
7 moral turpitude within the meaning of A.R.S. § 20-290(B)(6).

8           5.       Pursuant to A.R.S. § 20-290(B)(6), the Director may refuse to issue a  
9 license to Mr. Keltner if the Director finds a record of conviction by final judgment of a  
10 felony involving moral turpitude.

11          6.       Notwithstanding the unintentional material misrepresentation made by  
12 Mr. Keltner on his Application and his prior criminal felony convictions, Mr. Keltner has  
13 sustained his burden of proof by establishing that he possesses the requisite  
14 qualifications to be licensed by the Department as a resident life, disability and variable  
15 annuity insurance agent.

16                               **RECOMMENDED ORDER**

17           Under the particular facts and circumstances of this case, it is recommended that  
18 the application for a resident life, disability and variable annuity insurance agent license  
19 submitted to the Department by Harold Roy Keltner on March 11, 1996, be granted.

20  
21           Done this day, October 31, 1996.

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23  
24                               

25  
26                               \_\_\_\_\_  
27 **Richard N. Blair**  
28 Administrative Law Judge  
29  
30

original

Copy transmitted by mail

October 31, 1996

by Chris Crawford; to:

John King, Director

Department of Insurance

2910 North 44th Street, #210

ATTN: Curvey Burton

Phoenix, AZ 85018-7256